**HON'BLE SRI JUSTICE R. SUBHASH REDDY**

**Writ Petition No.1064 of 2005**

**Date: June 21, 2010**

**Between:**

The Depot Manager, APSRTC,
Dharmavaram

… Petitioner

And

The Industrial Tribunal-cum-Labour Court,
Ananthapur, represented by its Presiding
Officer, and another

… Respondents

**Order:**

This writ petition is filed the Depot Manager, A.P. State Road Transport Corporation, Dharmavaram challenging the validity of award dated 07-09-2004 passed by the Industrial Tribunal-cum-Labour Court, Ananthapur in I.D.No.72 of 2002.

2. The second respondent herein is a Driver in APSRTC, attached to Dharmavaram Depot. By order dated 04-09-1996,

passed in proceedings No.02/P1/118/ (5)/95 DVRM, he was removed from service as a measure of punishment in the disciplinary proceedings initiated against him. He questioned the same by filing an application under Section 2(A)2 of Industrial Disputes Act, 1947 before the Industrial Tribunal-cum-Labour Court, Ananthapur. The Tribunal, by impugned award, ordered reinstatement of the 2nd respondent into service with continuity of service and back-wages from
05-03-2002.

3. On 02-09-1995, while the second respondent was driving the bus bearing No.AEZ-3490, from Kanaganapalli Police Station to Dharmavaram, a check was exercised by the Excise authorities and on an allegation that he was carrying 30 bottles of 'Rocket' Whisky of 180 m.l., each unauthorizedly in the bus; the said stock of Whisky was seized. On the report of the Excise authorities to the petitioner-Corporation, disciplinary proceedings were initiated against the second respondent and the following charge was framed against him:

> "For having carried 30 bottles of Rocket Whisky (Prohibition Liquor) of 180 ML each illegally in AEZ 3490 while bringing the empty vehicle from Kanaganapalli to Dharmavaram which was found out when a check was exercised by the Excise Supdt. Ananthapur near Kattakindapalli at 6-30 Hrs. on 2-9-95 on route Peruru-Dharmavaram (via) Vepakunta thus violated the standing instructions in force which constitutes misconduct."

4. In view of denial of charge by the petitioner, a regular enquiry was conducted and in the enquiry proceedings, the enquiry

officer has recorded a finding that the second respondent-workman is guilty of the charge framed against him. After issuing show-cause notice for removal, and on receipt of explanation, the second respondent was removed from service. The appeal and review filed by the second respondent also ended in dismissal. Thereafter, the second respondent filed an application under Section 2(A)2 of the Industrial Disputes Act, 1947 before the Industrial Tribunal-cum-Labour Court, Ananthapur. The Tribunal, by the impugned award, disagreeing with the findings of the disciplinary authority, ordered reinstatement of the second respondent into service with 50%
back-wages from 05-03-2002

5. In this case, it is not in dispute that the bus was being driven by the second respondent from Kanaganapalli Police Station to Dharmavaram. During transit, liquor bottles were found in a bag, which was kept in the crew box of the bus. Though there is no direct evidence to the effect that the second respondent was only transporting the liquor bottles; on the ground that he admitted during the enquiry that he carried the bottles, he was removed from service. The Tribunal, by recording a finding that the Conductor as well as the Driver of the bus are in-charge of the crew box and in absence of any clear evidence that the second respondent alone had kept the bag containing liquor bottles in the crew box, disbelieved the version put-forth by the Excise authorities and ordered reinstatement of the second respondent

into service. The order of removal was passed on 04-09-1996, but the petitioner did not pursue his remedies of appeal and review immediately. The appeal was filed on 24-04-2002 and dismissed on 21-05-2002. Thereafter, revision was filed and ended in dismissal on 24-12-2002. After disposal of the revision petition, claim petition was filed before the Tribunal on
05-03-2002. In view of delay and laches on the part of the second respondent-workman in pursuing departmental remedies, the Tribunal, while ordering reinstatement, ordered for payment of back-wages only from 05-03-2002.

6. It is submitted by learned standing counsel for the petitioner-Corporation that though it is clearly proved in the domestic enquiry proceedings that the second respondent-workman alone was responsible for carrying liquor bottles illegally in the bus, the Tribunal, without recording any further valid finding, disbelieved the findings recorded by the enquiry officer. It is submitted that in every case of reinstatement, the workman is not entitled for
back-wages automatically unless it is proved that he was not gainfully employed during the said period and pleads to that effect in the application filed by him under Section 2(A)2 of the Industrial Disputes Act, 1947.

7. On the other hand, it is submitted by the learned counsel for the second respondent that in absence of any clear evidence, the enquiry officer has recorded adverse findings on the charge framed against the second respondent; in that view of the matter,

it is always open to the Tribunal to re-appreciate the evidence and set-aside the findings recorded in the domestic enquiry proceedings. It is submitted that as the second respondent was not employed during the period from 05-03-2002, he was rightly awarded back-wages and there are no grounds to interfere with the same.

8. From the order of removal passed by the disciplinary authority, it is clear that on the date of check exercised by the Excise authorities, the second respondent was driving the bus from Kanaganapalli Police Station to Dharmavaram. It is to be noticed that liquor bottles, which were seized from the bus, were in the bag, which was kept in the crew box. It is the specific case of the second respondent-workman that Conductor is the custodian of the crew box and thus he cannot be held responsible if anything is put in the crew box. Though there is no direct evidence on record to show that the second respondent alone was transporting the liquor bottles, the disciplinary authority, only on the deposition of the Excise Circle Inspector to the effect that the second respondent has admitted before him that he was transporting liquor bottles passed the order of removal. The *Panch* witnesses, namely, Sri D. Venkataramappa and Sri B. Anjaneyulu did not support the version of the Excise authorities and they deposed to the effect that the Excise authorities obtained their signatures on blank white papers. Even the Conductor of the bus who was on duty before the bus was taken to the Police Station was not examined. In absence of any clear material to show that the second respondent-workman himself was responsible for carrying of liquor bottles in the crew box of the bus, the Tribunal has correctly appreciated the evidence on record and disbelieved the

charge framed against the second respondent. It is to be noticed that this court has passed interim order subject to compliance of the provision under Section 17-B of Industrial Disputes Act, 1947, but, now it is stated that the second respondent has already been taken into service, in compliance of the directions issued by the Tribunal, in the year 2004 itself and since then he has been working continuously. In view of the reasons recorded by the Tribunal and also taking into account the fact that the second respondent has already been reinstated into service, pursuant to the award of the Tribunal, as early as in the year 2004, I do not find any merit in this writ petition to interfere with the impugned award of the Tribunal. Although learned standing counsel for the petitioner contends that second respondent was not entitled for award of

back-wages even from 05-03-2002, placing reliance on a judgment of the Supreme Court in the case of **J.K. Synthetics Ltd. V. K.P. Agarwal & Anr.**[1], but, no material is placed before this court by the learned standing counsel to show that the second respondent did not plead and prove about his non-employment, during the period he was out of service, in the application filed by him under Section 2(A)2 of Industrial Disputes Act, 1947. Hence, the Tribunal also awarded back-wages from 05-03-2002 from the date of filing of the application.

9. For the foregoing reasons, I do not find any illegality in the impugned award of the Tribunal, which warrants interference, in this petition, under Article 226 of the Constitution of India.

10. The writ petition is accordingly dismissed, however, in the circumstances, without any order as to costs.

**(R. SUBHASH REDDY, J)**

June 21, 2010
**MRR**

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[1] **2007 (2) SCC 433**